IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Chapter VIII, Rule 32(2) (b)

Description of Case

Appeal from Order No.848 of 2001

(Old No. 650 of 1999)

Date of Decision :- 8th August,2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date :- Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 848 of 2001

1. Smt. Bharti Devi W/o Late Sri Kishan Lal @ Munna.
2. Sri Gautam S/o Late Sri Kishan Lal.
3. Master Gopal minor son of Late Sri Kishan Lal.
4. Km. Shivani minor daughter of Late Sri Kishan Lal.
   Nos. 3 & 4 under the guardianship of their mother
   And natural guardian Smt. Bharti Devi appellant No. 1.
   All R/o Village Missarwala,
   Behind Cinema Hall, Town Area, Doiwala,
   District Dehradun. ..... Appellants

Versus

1. Sri Mahesh Chandra Bhatia S/o Sri Basant Lal Bhatia,
   R/o 30 Rest Camp,
   Dehradun.
2. The New India Insurance Company Ltd.,
   Astley Hall, Dehradun,
   Through its Senior Development Manager.
3. Manoj Kumar S/o Sri Bishambhar Das,
   R/o 533 Duplex Flat, Gur Mandi,
   Delhi.
4. The Oriental Insurance Company Ltd.,
   Rajpur Road, Dehradun,
   Through its Divisional Manager.

..... Respondents

Mr. H.M. Bhatia, Advocate on behalf of Mr. Arvind Vashishth, Advocate for the appellants.
None for respondents Nos. 1 & 3.
Mr. M.K. Goyal, Advocate for respondent No. 2.
Mr. V.K. Kohli, Senior Counsel with Mr. I.P. Kohli, Advocate for respondent No.4.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

RAJEEV GUPTA, C.J. (Oral)

This is claimants' appeal for enhancement of the compensation awarded by Motor Accident Claims Tribunal / Ist Addl. District judge, Dehradun vide Award dated 18.05.1999 passed in M.A.C.P. No. 59 of 1997.

2. The claimants claimed compensation of Rs. 5,04,000/- for the death of Kishan Lal @ Munna, husband of claimant No. 1 Smt. Bharti

Devi and father of claimants Nos. 2 to 4 in the motor accident on 13.03.1997 when the Truck driven by one Bhagirath bearing registration No. DL01-G/A-4180 collided with his Truck bearing registration No. URM-1995 resulting in serious injuries to Kishan Lal @ Munna, who succumbed to those injuries on 15.03.1997. The claimants pleaded that deceased Kishan Lal @ Munna used to earn Rs. 2,500/- per month as salary and Rs. 40/- per day as allowance.

3. The owner and insurer of the Truck bearing registration No. URM-1995 and the insurer of the Truck bearing registration No. DL01-G/A-4180 contested the claim and filed their separate written statements. The insurer of the Truck bearing registration No. DL01-G/A-4180 denied its liability to pay compensation to the claimants on the plea that the driver of the truck was not holding a valid driving license and, in the alternative, it was pleaded that it was a case of contributory negligence of the drivers of both the trucks.

4. The Tribunal, on the evidence led by the parties, held that deceased Kishan Lal @ Munna sustained injuries in the motor accident on 13.03.1997 and succumbed to those injuries on 15.03.1997; the accident occurred due to the rash and negligent driving of the drivers of both the trucks; and the insurer of the Truck bearing registration No. DL01-G/A-4180 was liable to pay 50% of the compensation assessed by the Tribunal.

5. On the evidence led by the claimants about the income of the deceased, the Tribunal assessed his income at Rs. 2,400/- per month and after deducting 1/3rd of the said amount as the personal expenses of the deceased, the claimants' dependency was assessed at Rs. 1,600/- per month and Rs. 19,200/- per annum. Considering that the deceased was aged about 42 years on the date of the accident, the Tribunal selected the multiplier of '15'. By multiplying the annual dependency of Rs. 19,200/- with the multiplier of 15, the

compensation was worked out to Rs. 2,88,000/-. The Tribunal, further, awarded a sum of Rs. 2,000/- towards Funeral Expenses and Rs. 5,000/- towards Loss of Consortium to the widow. Thus, a total sum of Rs. 2,95,000/- was assessed as compensation in the case. As the Tribunal held it to be a case of contributory negligence, where the drivers of both the trucks were equally responsible for the accident, the insurer of the Truck bearing registration No. DL01-G/A-4180 was directed to pay 50% of the above amount of Rs. 2,95,000/- i.e. Rs. 1,47,500/- as compensation to the claimants with interest at the rate of 12% per annum from the date of the filing of the petition till the date of the payment.

6. Mr. H.M. Bhatia, the learned counsel for the appellants vehemently argued that the Tribunal has erred in holding that deceased Kishan Lal @ Munna was also equally responsible for the accident; and in assessing the income of he deceased at Rs. 2,400/ per month only whereas the evidence on record established that the deceased was getting more than Rs. 3,000/- per month as salary and allowance as truck driver.

7. Mr. V.K.Kohli, the learned Senior Counsel for the insurer of the Truck bearing registration No. DL01-G/A-4180, on the other hand, supported the Award and submitted that since it was a case of ‘head-on collision’ between two trucks, the Tribunal has rightly held that the drivers of both the trucks were equally responsible for the accident and the amount of compensation awarded by the Tribunal cannot be termed as ‘inadequate’ so as to warrant enhancement.

8. The finding that deceased Kishan Lal @ Munna sustained the injuries in the accident on 13.03.1997 and succumbed to those injuries on 15.03.1997 has, now, attained finality, as none of the respondents have filed any appeal against the Award.

9. The finding recorded by the Tribunal holding the drivers of both the trucks equally responsible for the accident is being challenged by the appellants / claimants on the ground that deceased Kishan Lal @ Munna was driving his truck on the left side of the road and it was the driver of the other truck, who came on his wrong side and collided with the truck or Kishan Lal @ Munna resulting in the accident.

10. It has come in the evidence that the road in question was wide enough to accommodate three trucks at a time. It is also not in dispute that the accident took place on a straight road. It is also in the evidence that the drivers of both the trucks sustained injuries in the accident and both of them succumbed to their injuries. The evidence of PW2 Beer Singh is not sufficient to hold that the driver of the truck bearing registration No. DL01-G/A-4180, alone, was responsible for the accident. If deceased Kishan Lal @ Munna, who was driving truck No. URM-1995, would have taken precautionary measures well in time after noticing the truck coming from the other side, he could have avoided the accident. As Kishan Lal @ Munna did not do what he could have done as a vigilant truck driver to avoid the accident, we do not find any fault with the finding recorded by the Tribunal holding the drivers of both the trucks equally responsible for the accident.

11. That apart, it being a case of 'head-on collision' between two moving vehicles from the opposite direction on a sufficiently wide straight highway, the inference of contributory negligence to the equal extent on the part of the drivers of both the vehicles is inevitable. The Apex Court, in the case of **Bijoy Kumar Dugar Vs. Bidyadhar Dutta and others** reported in **2006 (1) T.A.C. 969 (S.C.)** while dealing with a case of head-on collision' between a Maruti Car and a passenger Bus, observed in para 12:

> "12. Adverting to the next contention of the claimants, no doubt the High Court has not dealt with the point in issue. However, we have noticed the reasoning and finding of the MACT recorded under Issue No.2 It is the evidence of Rajesh Kumar Gupta-PW2 who was traveling in the Maruti Car alongwith the deceased Raj Kumar Dugar on the day of the accident that he also suffered some injuries in the said accident. He stated that while coming from Digboi, the Maruti car being driven by the deceased met with an accident at a place near Kharjan Pol. Before the accident, Raj Kumar Dugar noticed a passenger bus coming from the opposite direction and the movement of the bus was not normal as it was coming in a zigzag manner. The Maruti car being driven by the deceased Raj Kumar Dugar and the offending bus had a head-on collision. The MACT has not accepted the evidence of PW2 to prove that the driver of the offending bus was driving the vehicle in abnormal speed. If the bus was being driven by the driver abnormally in a zigzag manner, as PW2 wanted to believe the Court, it was, but natural, as a producent man for the deceased to have taken due care and precaution to avoid head-on collision when he had already seen the bus from a long distance coming from the opposite direction. It was head on collision in which both the vehicles were damaged and unfortunately, Ram Kumar Dugar died on the spot. The MACT, in our view, has rightly observed that had it been the knocking on one side of the car, the negligence or rashness could have been wholly fastened or attributable to the driver of the bus, but when the vehicles had a head –on collision, the drivers of both the vehicles should be held responsible to have contributed equally to the accident. The finding on this issue is a finding of fact and we do not find any cogent and convincing reason to disagree with the well-reasoned order of the MACT on this point. The MACT has awarded interest at the rate of 10% per annum on the amount of compensation from the date of filing of the claim application till the date of payment. It is a discretionary relief granted by the MACT and, in our view, the discretion exercised by the MACT cannot be said to inadequate and inappropriate."

12. Thus, we affirm the finding recorded by the Tribunal holding that the drivers of both the trucks were equally responsible for the accident.

13. So far as the income of deceased Kishan Lal @ Munna is concerned, true, the evidence led by the claimants is to the effect that the deceased was getting salary of Rs. 2,500/- per month and allowance of Rs. 40/- per day as Truck Driver. Allowance is paid to truck driver for his expenditure on tour. Hence, it is obvious that he could not have contributed towards the family expenditure from the amount of allowance. The contribution towards the family could be only form the salary. Thus, we are satisfied that the Tribunal has rightly assessed the income of the deceased at Rs. 2,400/- per month and the claimants' dependency at Rs. 1,600/- per month after deducting 1/3rd of the income of the deceased as his personal expenses.

14. The multiplier of '15' selected by the Tribunal, in view of the prevalent trend, is rather on the higher side, as the age of the deceased was about 42 years.

15. Be that as it may, we are satisfied that the compensation of Rs. 2,95,000/- assessed by the Tribunal was just and proper in the facts and circumstances of the present case. As we have upheld the finding recorded by the Tribunal holding the drivers of both the trucks equally responsible for the accident, the claimants were rightly held entitled to receive 50 % of the above amount of compensation of Rs. 2,95,000/- i.e. Rs. 1,47,500/-. The Tribunal has been quite liberal in awarding interest at the rate of 12% per annum.

16. As we do not find any scope for enhancement of the compensation either on account of the income of the deceased or the claimants' dependency assessed by the Tribunal or the multiplier selected, the appeal, filed by the claimants under Section 173 of the Motor Vehicles Act for enhancement of the compensation, fails and is hereby dismissed.

17. No order as to costs.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C. J.)**

08.08.2006 08.08.2006

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